

**SAINT REGIS MOHAWK TRIBAL COURT  
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

---

<b>Richard Francis,</b>	)	<b>Case No.: 17-LND-00007</b>
<b>Claimant(s)</b>	)	
	)	
	)	
<b>-V-</b>	)	<b>DECISION AND ORDER</b>
	)	<b>ON MOTION TO DISMISS and</b>
<b>Jeff Tarbell; Jean Square;</b>	)	<b>MOTION FOR SUMMARY</b>
<b>Bruce Tarbell; James Tarbell,</b>	)	<b>JUDGMENT</b>
<b>Respondent(s)</b>	)	

---

**Procedural History**

On August 20, 2014 Claimant Richard Francis filed a land dispute complaint with the Saint Regis Mohawk Land Dispute Tribunal naming Jeff Tarbell; Jean Square (nee Tarbell); Bruce Tarbell; and James Tarbell as the Respondents. Pursuant to the Saint Regis Mohawk Tribe Land Laws and Land Dispute Ordinance (SRMT LL&LDO) the case was transferred to the Saint Regis Mohawk Tribal Court in December 2016.<sup>1</sup>

Status conferences were held on March 21, 2017; May 9, 2017; and September 18, 2017.

A motion to dismiss was submitted by the Respondents on June 26, 2017. Oral arguments on the motion to dismiss were held in Saint Regis Mohawk Tribal Court on October 23, 2017.

**Factual Background**

The following includes a basic factual summary based upon the documents submitted by the parties.

Josephine White sold a parcel of land on June 7, 1938 to Louis Francis<sup>2</sup> containing about 3 acres more or less and is described as being bounded as follows,

“on the East by Mrs. Jake LaFrance, on the North by joins<sup>3</sup> land own by the late Phillip C. Tarbell, on the West Louis land own Josephine White, on the South by the main highway.”<sup>4</sup>

---

<sup>1</sup> SRMT LDO § VI. H. 1.

<sup>2</sup> The Court notes that Louis Francis is the Complainant’s father.

<sup>3</sup> The Court notes that the typed transcription of this document translates this word as ‘Louis.’ However, it is used in several handwritten documents and appears to be the word ‘joins.’ Either version does not impact the outcome of this case.

<sup>4</sup> Record June 7, 1938 Land Sale Transfer.

On March 30, 1945 Mrs. Joseph F. Tarbell sold a tract of land to Louis Francis containing one (1) acre more or less and is described as,

“located on the Northern side of the highway leading from Hogansburg to the Village of St. Regis, P.Q.; on the South joins land owned by Paul C. Tarbell; on the West joins land own by the late Phillip C. Tarbells land; on the East joins land owned by Louis Francis; on the South side joins land owned by Paul C. Tarbell...”<sup>5</sup>

On January 22, 1963 Frank Rourke sold and transferred a parcel of property to Louis and Mary Francis which contained approximately 4 acres of land and is described as being bounded as follows,

“...on the North by the St. Lawrence River and the lands of Richard Lazore. On the East by the Canadian and American Commons. On the West by the lands of Frank Rourke, the grantor herein; and on the South by the lands of Louis and Mary Francis, the grantees herein. Being a lot of land containing approximately 4 acres more or less.”<sup>6</sup>

Frank Rourke sold a parcel of property containing approximately 4 acres of land to Louis and Mary Francis on June 7, 1963. The property was described as being bounded,

“On the North by the Louis and Mary Francis property formerly purchased from Frank Rourke in the year 1963; on the West by Richard Lazore; on the East by property owned by the Louis and Mary Francis home; and on the South by the property of Frank Rourke the grantor within. Being part of the premises by the grantor herein from Margaret Loran.”<sup>7</sup>

On January 21, 1964 Andrew and Agnes Tarbell sold and transferred approximately two acres of property to Mary Francis in exchange for \$100.<sup>8</sup> This is the land that is in dispute. The property is described as,

“being bounded on the North by the Canadian border; on the West, South, and East by the property of Louis and Mary Francis (formerly owned by Frank Rourke). Containing approximately two (2) acres more or less, Being the same property given to said Agnes Tarbell by her father, Richard Lazore, now deceased, by will dated September 28, 1956.”<sup>9</sup>

The Court notes that these transactions resulted in Louis and Mary Francis owning approximately 14 acres of land.

---

<sup>5</sup> Record March 30, 1945 Land Sale Transfer.

<sup>6</sup> Record January 22, 1963 Land Sale Transfer.

<sup>7</sup> Record June 7, 1963 Land Sale Transfer.

<sup>8</sup> Record January 21, 1964 Land Sale Transfer.

<sup>9</sup> *Id.*

An option for Mr. and Mrs. Andrew Tarbell to purchase back the two (2) acres of property from Mary Francis was also executed on January 21, 1964.<sup>10</sup> The document provided that the option to buy back was for the amount of \$125 and must have been exercised by May 1, 1964.<sup>11</sup>

On May 1, 1964 Agnes Tarbell entered into an agreement with Arthur Lazore in which,

“Agnes Tarbell does hereby sell a tract of land that is given to her late father and which is recorded in the Tribal records, for the sum of \$125.00 with the provision that Agnes Tarbell will be able to buy this tract of land back within thirty days (30) for the sum of \$150.00”<sup>12</sup>

There is a handwritten note on the option agreement signed by a Mrs. Arthur Lazore, which stated that the option was paid by Francis Tarbell.<sup>13</sup> There is no date accompanying the signature.

A Saint Regis Mohawk Tribe Use and Occupancy Deed was issued to Richard Francis on October 27, 1993 for property known as Lot #391, the former property of Louis and Mary Francis, his father and mother.<sup>14</sup> This tract of land contained approximately 14 acres more or less according to the SRMT Use and Occupancy Deed issued to the Claimant.<sup>15</sup>

An SRMT Use and Occupancy Deed was issued to Dawn Tarbell, Jeffrey Tarbell, Jean (Tarbell) Square, Bruce Tarbell and James Tarbell, for the property known as Lot #300 which contains approximately two (2) acres of land on July 29, 2014.<sup>16</sup>

### **Jurisdiction**

This case was transferred from the Saint Regis Mohawk Tribe’s Land Dispute Tribunal (SRMT LDT) pursuant to the Saint Regis Mohawk Tribe’s Land Laws and Land Dispute Ordinance (SRMT LL&LDO) enacted in December 2016.<sup>17</sup> The Court exercises jurisdiction pursuant to this Tribal Ordinance.

### **Motion to Dismiss**

The Respondents move the Court to dismiss the Complainant’s case, pursuant to SRMT Rules of Civil Procedure § XVI, Rule 13.C., which states “[m]otions to dismiss the lawsuit because the Court lacks jurisdiction or because the plaintiff has not stated a legitimate basis for relief may be made at any time.”<sup>18</sup>

---

<sup>10</sup> Record Option January 21, 1964.

<sup>11</sup> *Id.*

<sup>12</sup> Record Buy Back Option May 1, 1964.

<sup>13</sup> *Id.*

<sup>14</sup> Record SRMT Use and Occupancy Deed October 27, 1993.

<sup>15</sup> *Id.*

<sup>16</sup> Record SRMT Use and Occupancy Deed July 29, 2014.

<sup>17</sup> SRMT LL&LDO § VI. H. 1.

<sup>18</sup> SRMT Rules of Civil Procedure § XVI. C.

Respondents argue the Complainant's complaint fails to allege any harm or damages committed by the Respondents or identify the requested relief; allege a specific violation of tribal law; or provide a specific property description in form of an authorized land survey to support the Complainant's claim.<sup>19</sup>

The Court routinely entertains motions to dismiss. The Court noted in *LaFrance v. Oaks*, 10-CIV-00010, that the Complainant bears the burden of proof, in other words must prove that there exists a cause of action "upon which relief may be granted by this Court."<sup>20</sup>

The Complaint was filed on August 20, 2014 under the former SRMT Land Dispute Ordinance. The former SRMT LDO required the Complainant to fill out a complaint form that was developed and provided by the SRMT Tribal Clerk and it required the following information: nature of the dispute, the name of the Respondent, and copies of any relevant documents.<sup>21</sup>

Reviewing the Complaint in this case, it lists the Respondents and for the nature of the land dispute it states: "I hold a deed for this land and have not seen any record showing the option to repay loan happened."<sup>22</sup> The Complaint lists the disputed land as Lot #300 and alleges Lot #300 was originally Lot #391. Thus, the Complaint clearly describes the nature of the dispute and by doing so identifies a harm, that he's been deprived ownership of Lot #300. The complaint form does not include a place for complainants to list a request relief. However, the Complainant claims he owns Lot #300, thus he is seeking ownership of Lot #300.

As for inclusion of copies of relevant documents, it does not appear that the Complainant attached any to the Complaint. Although this was a stated requirement of the Complaint Form, the former SRMT LDO also provided that parties could submit written and oral testimony at the Initial Appearance at the Tribunal, which was a fact gathering meeting only.<sup>23</sup> Moreover, the former SRMT LDO had no provision for dismissal of a complaint for failure to include relevant documents in their initial filing. Thus, the question presented is should the Court dismiss the Complaint for its failure to include the relevant documentation?

Since the case was transferred to the Court, the Complainant has provided copies of the relevant deeds in his Response to the Respondents' Motion to Dismiss. Moreover, the remedy for failure to share documents or discovery in a civil case is typically a continuance and it is rare an outright dismissal is granted. Furthermore, Respondents' Motion appears to contain most, if not all, relevant documents where are contained in the Complainant's Response. Thus, the absence of the documents at the complaint stage was not prejudicial to the Respondents.

Respondent also argues the Complainant failed to provide boundary measurements or property description in the form of a land survey. As for the boundary measurements, the Complainant alleges in the Complaint that he owns Lot #300 and Respondents' deed provides the boundary measurements. With regards to the survey, the SRMT LDO does state a survey is a

---

<sup>19</sup> Respondents' Memorandum of Law in Support of Motion to Dismiss for Failure to State a Claim and Summary Judgment. 4.

<sup>20</sup> *LaFrance v. Oaks*, 10-CIV-00010, 2 (August 13, 2010).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> SRMT LDO § XIII. C.

relevant document that must be filed with the complaint, if there is a survey.<sup>24</sup> Respondents cite to the SRMT LL&LDO and argue a survey is required. However, it is not required to obtain a survey in order to file a complaint, it is only required for certain transfers of property.<sup>25</sup>

There was a field survey of the Complainant's property conducted on August 8, 1994 and it was signed by the SRMT Tribal Clerk. It does not appear that it was filed with the Complaint. Nevertheless, the Complainant included it in his Response. Moreover, it appears the same survey was provided by the Respondents in their Motion to Dismiss, thus they already had a copy of it. As noted earlier, generally the only remedy for a failure to include a document would be an extension of time to allow the opposing party to review the document. Thus, the absence of the documents at the complaint stage was not prejudicial to the Respondents.

Finally, the Respondents argue that the Complainant did not allege a specific violation of tribal law or the SRMT LDO. The former SRMT LDO and the new SRMT LL&LDO do not require the complaint to allege a specific violation of tribal law or the SRMT LDO. As noted above, the complaint requires a brief description of the dispute, which the Complainant provided by stating that he believes he owns Lot #300, which the Respondents claim they own due to a 2014 deed. The purpose of the SRMT LDO was to provide a mechanism to address these types of land disputes. The SRMT LL&LDO states that a deed issued by the SRMT Tribal Clerk may be challenged if there is a substantial error committed by the Tribal Council or Tribal Clerk.<sup>26</sup> The Complainant presents the Court and the Respondents with a land dispute – who owns Lot #300? Although Complainant does not specifically state his grounds, it is clear by his language that he believes he owns Lot #300, that it used to be part of #391, and he is challenging the issuance of the deed to Lot #300. Thus, it is not required that he allege any violation of tribal law.

As noted in *LaFrance*, the most common criterion in considering a motion to dismiss for failure to state a claim is whether the Complainant has a cause of action, not whether he has stated one.<sup>27</sup> The Complainant in this case has a cause of action pursuant to the SRMT LL&LDO. The Complainant outlined a land dispute in his complaint form provided by the Tribal Clerk's Office and gave a basic description of the dispute, namely he believes he owns Lot #300, for which the Respondents were given a deed for in 2014. This type of contention is exactly the kind of dispute the SRMT LL&LDO was designed to address, disputes between tribal members regarding the ownership of land.

Given that the Complainant has stated a cause of action, that he is disputing the Respondents' ownership of Lot #300, for which the Court possesses jurisdiction; the required deeds and survey have been provided; and that the SRMT LL&LDO does not require the Complaint to allege a specific violation of tribal law, other than describe the dispute, the Motion to Dismiss is denied.

---

<sup>24</sup> SRMT LDO VIII. B. 4.

<sup>25</sup> SRMT LL&LDO IV. E. 9. (b).

<sup>26</sup> SRMT LL&LDO § IV. E. 6. (a)(i).

<sup>27</sup> *LaFrance*, *supra* note 20, note 1.

### **Motion for Summary Judgement**

Respondents also present a motion for summary judgment and argue there is not a genuine issue as to any material fact.<sup>28</sup> The SRMT Rules of Civil Procedure do not contain a provision for summary judgement. However, the Court has allowed motions for summary judgment utilizing the Federal Rules of Civil Procedure.<sup>29</sup> “In ruling on a motion for summary judgment, the function of the Court is not to decide the issues of material fact, but rather to determine whether such issues exist. If a genuine material issue exists, it must be left to a later determination. The party seeking summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which under the applicable principals of tribal law entitle the moving party a summary judgment as a matter of law.”<sup>30</sup>

Respondents simply argue there is no genuine issue as to any material facts, but does not provide any argument. Respondents merely claim the Tribal Clerk conducted research prior to the issuance of their deed for Lot #300, thus there is no dispute. The Complainant responded by providing several deeds which allegedly include the two (2) acres in Lot #300 and argue that the option was never paid, thus he still owns the two (2) acres in Lot #300.

Summary judgment “is only permitted if the established record indicates there is no genuine issue of material fact.”<sup>31</sup> In the case at bar, as evidence the option was repaid the Respondents submitted a type written documentation of a sale between Agnes Tarbell and Arthur Lazore on May 1, 1964. Perhaps this is for the land involved in the option between Agnes Tarbell and Mary Louis, however, there is no description of the land other than it is the land given to Agnes Tarbell by her late father. There is no documentation as to how much land Agnes Tarbell’s father owned. Thus, it is unclear whether the May 1, 1964 transaction involved the land in dispute. As a result, there is a genuine issue involving a material fact; whether the option was repaid. Respondents have failed to satisfy their burden and the Motion for Summary Judgment is denied.

---

<sup>28</sup> Respondents’ Memorandum of Law in Support of Motion to Dismiss for Failure to State a Claim and Summary Judgment, 6.

<sup>29</sup> SRMT Civil Code Section VI. A.; *See St. Regis Mohawk Tribal Council v. Bero*, 14-LND-0006, 2 (November, 25, 2015).

<sup>30</sup> *Bero* at 2.

<sup>31</sup> *Id.* at 3.

**ORDER**

It is hereby **ORDERED** that the Respondents' Motion to Dismiss is **DENIED** and the Respondents' Motion for Summary Judgment is **DENIED**.

This matter shall be set for a status conference to set up a discovery schedule and also set for trial.

Signed by my hand this 21<sup>st</sup> day of November 20  .



---

Carrie E. Garrow  
Chief Judge  
Saint Regis Mohawk Tribal Court

